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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

28 DECLARATION OF PROFESSOR KAMALIA MEHTIYEVA IN SUPPORT OF EX PARTE
APPLICATION FOR DISCOVERY PURSUANT TO 28 U.S.C. § 1782

1 I, Professor Kamalia Mehtiyeva, declare and state as follows:

2 1. My name is Kamalia Mehtiyeva. I am a citizen of France, and I
3 currently reside in Paris, France. I am over the age of twenty-one years old, I have
4 never been convicted of a crime involving moral turpitude, and I am competent to
5 make the statements contained herein.

6 2. I am a law professor at Paris XII (Paris-Est Créteil), where I teach
7 courses on French civil procedure, International Judicial Law, European Union
8 Procedural Law, Civil Enforcement and International Arbitration. I am also director
9 of LLM in International litigation and international arbitration. I have published a
10 monography entitled *The Notion of Mutual Legal Assistance*, awarded the Prize of
11 the French Branch of the International Law Association. I am also author of the
12 annual digest on international mutual legal assistance for the *Journal du Droit
13 International (Clunet)*.

14 3. My full *curriculum vitae* setting out my professional experience is
15 attached as **Exhibit 1**.

16 4. I have been retained by Willkie Farr & Gallagher LLP, counsel for
17 Hume Street Management Consultants Limited (“HSMC”) and Patrick McKillen
18 (collectively, the “Petitioners”), to provide my independent expert opinion on
19 matters of French law relevant to Petitioners’ application to conduct discovery
20 pursuant to 28 U.S.C. § 1782 (the “Application”), including an overview of the
21 relevant French proceedings, discovery in French courts, and the receptivity of
22 French courts to evidence obtained through proceedings under Section 1782.

23 5. I make this expert witness report (the “Report”) in support of
24 Petitioners’ Application to pursue discovery from Sheikh Hamad bin Jassim bin
25 Jaber bin Mohammed bin Thani Al Thani (“Sheikh Hamad bin Jassim”)
26 (“Respondent”) for use in proceedings in front of the Paris Commercial Court.

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1 6. I will review, evaluate, and analyze additional information as it
2 becomes available. I reserve the right to amend or supplement my opinions based
3 upon further information learned or relied upon, and in response to opinions raised
4 in any reports, declarations, or depositions of any other expert put forward in this
5 matter. Therefore, the analyses and opinions described herein may be supplemented
6 based upon future discovery and developments.

7. I am being compensated at a rate of EUR 500 per hour for my work in
8 this matter. My compensation in this matter is not contingent on any opinion that I
9 reach or the outcome of this action.

10 8. In preparing this Report, I have reviewed the Petitioners' Application
11 in its entirety, including their Memorandum of Law (the "Memorandum") and the
12 Declaration of David Apelbaum dated May 6, 2024 (the "Apelbaum Declaration").

EXECUTIVE SUMMARY

14 1. In their Application, Petitioners request specific documents and
15 testimony from the Respondent, which targets information and documents critical to
16 the resolution of the proceedings in front of the Paris Commercial Court. I
17 understand that Petitioner HSMC is preparing to bring suit on the merits in front of
18 the Paris Commercial Court in relation to a dispute between the parties concerning
19 remuneration owed to Petitioner HSMC by Sheikh Hamad bin Jassim’s company,
20 Constellation Paris (the “French Merits Proceeding”). Petitioner HSMC is currently
21 engaged in pre-litigation proceedings in front of the Paris Commercial Court to
22 procure discovery to support its claims (the “French Discovery Proceedings” and,
23 together with the French Merits Proceeding, the “French Proceedings”).

24 2. Petitioners' Application requests discovery of documents from the
25 Respondent that is unavailable under French procedure. More specifically, French
26 civil procedure does not afford parties in Petitioners' position to seek discovery

1 directly from an individual, and instead parties must identify the location of
2 documents and then obtain an order allowing for a search of that location. While
3 Petitioner HSMC has attempted to obtain discovery from Sheikh Hamad bin
4 Jassim's office in Paris via pre-litigation discovery mechanisms available under
5 French law, the French court found that Petitioner HSMC did not possess sufficient
6 evidence against Sheikh Hamad bin Jassim to justify the search of his office. As
7 such, Petitioners find themselves in an unusual position: requiring additional
8 discovery concerning Sheikh Hamad bin Jassim in order to obtain discovery from
9 Sheikh Hamad bin Jassim in the first instance. As a consequence, Petitioners must
10 pursue discovery via alternative lawful avenues and thus bring their Application.

11 3. Even in a scenario in which Petitioners sought discovery from specific
12 locations relevant to the Respondent in pre-litigation discovery proceedings and
13 were denied by a French court, I am aware of no French rule or policy that would
14 bar Petitioners from seeking discovery elsewhere within the confines of relevant law.

15 4. Indeed, French courts are generally receptive to discovery obtained via
16 § 1782, and I have no reason to suspect that the Paris Commercial Court will be any
17 different in this instance.

18 5. I am also aware of no applicable French rules of civil procedure or other
19 prohibitions applicable in the Paris Commercial Court that would prohibit such
20 discovery. Nor am I aware of any proof-gathering restriction under French law
21 applicable to evidence obtained via Section 1782 generally or under the unique
22 circumstances of Petitioners' Application here that would prohibit—or even frown
23 upon—Petitioners seeking via discovery via Section 1782 for use in front of the Paris
24 Commercial Court. To the contrary, the Paris civil court has explicitly ruled
25 otherwise.

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1 6. Further, Petitioners' discovery requests are narrowly tailored to obtain
 2 only information crucial to the resolution of the French Proceedings, dissolving any
 3 concern that the discovery is overly burdensome.

4 7. Thus, I have no reason to believe that the Paris Commercial Court will
 5 decline to consider the evidence obtained through Petitioners' Application.

6 **SECTION I – BACKGROUND TO THE FRENCH PROCEEDINGS¹**

7 8. I understand that the French Proceedings are based in a contract dispute
 8 between Petitioners and Constellation Paris concerning remuneration owed to
 9 Petitioners by Constellation Paris following Petitioner HSMC's service as project
 10 manager in the development of a hotel on the former site of the historical seat of the
 11 French Ministry of Armed Forces on the Boulevard Saint-Germain (the "Saint-
 12 Germain").

13 9. I further understand that HSMC has been engaged in pre-litigation
 14 discovery proceedings in front of the Paris Commercial Court. In June 2023, HSMC
 15 sought pre-litigation document production under Article 145 of the French Code of
 16 Civil Procedure (*Code de procédure civile*, the "CPC") from Constellation Paris,
 17 Vinci Immobilier, and Sheikh Hamad bin Jassim in front of the Paris Commercial
 18 Court. Under Article 145 of the CPC, prospective litigants can seek provisional pre-
 19 litigation discovery measures, including a document production order from the
 20 President of the court under whose jurisdiction the suit on the merits would fall, in
 21 order to preserve evidence upon which resolution of the merits suit will depend. As
 22 opposed to the U.S. discovery procedure, pre-litigation document production aims
 23 at obtaining the production of a precise document detained by a third party or the

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 25 ¹ My understanding of the background facts comes from the Memorandum and Apelbaum
 26 Declaration and the cited documents therein.
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1 opposite party. The French Court of cassation has adopted a broader approach,
2 allowing the production of “categories” of documents rather than a defined
3 document. Such possibility is however subject to two restrictions: the applicant must
4 establish (i) the link between the measure sought and the subject of the prospective
5 claim; and (ii) the relevance of the requested measure for the prospective claim.
6 While I understand that HSMC continues to litigate pre-litigation discovery with
7 Constellation Paris, the Paris Commercial Court declined to issue a discovery order
8 against Sheikh Hamad bin Jassim’s office in Paris under Article 145 of the CPC.
9 Rather, the court found that HSMC did not possess sufficient evidence to support
10 pre-litigation discovery from Sheikh Hamad bin Jassim’s office.

11 10. The French court’s pre-litigation ruling rejecting the pre-litigation
12 discovery must be interpreted in light of the legal regime under Article 145 of the
13 CPC explained above. As Sheikh Hamad bin Jassim’s personal involvement, or lack
14 thereof, is central to the disputed facts in the French Proceedings, Petitioners require
15 discovery from him in his individual capacity. However, somewhat circuitously,
16 such discovery is unavailable to them from the French court without additional
17 evidence—that is, without additional discovery—and even then, will be limited to
18 documents, or categories of documents, located in specific, stated locations that may
19 or may not exist within the reach of the French courts. As such, Petitioners bring
20 this Application for discovery against Sheikh Hamad bin Jassim in front of this court.

21 **SECTION II – DISCOVERY OF EVIDENCE IN FRENCH CIVIL**
22 **PROCEEDINGS**

23 11. The discovery requested through this Application is unavailable in the
24 French Proceedings.

25 12. With respect to the French Discovery Proceeding, Petitioners have been
26 unable to secure pre-litigation discovery against Sheikh Hamad bin Jassim’s Paris
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1 office in front of the Paris Commercial Court because of, ironically, lack of evidence
2 (*i.e.*, discovery). The bar for pre-litigation discovery under Article 145 is high, and
3 Petitioners have thus far been unable to meet their burden with the evidence they
4 have in-hand to secure a discovery order against Sheikh Hamad bin Jassim's Paris
5 office from the French court. What is more, there is no mechanism in these
6 proceedings for taking a deposition or issuing discovery requests for all responsive
7 documents held by an individual; discovery will be limited to specific documents,
8 or perhaps categories of documents, within a specified location.

9 13. French law allows forced document production which may be ordered
10 against a person to disclose a document or series of documents relevant to the
11 proceedings. However, the function and the scope of forced document production in
12 France are significantly different and narrower than those of the U.S. discovery. The
13 purpose of article 145 of the French Civil Procedure Code, combined with articles
14 138, 139, and 142 of the same Code that govern force document production under
15 French Law, is to collect a piece of evidence rather than revealing the existence of
16 one. In other words, it cannot be used to discover existence of evidence that was
17 unknown to the interested party prior to the discovery measure. The sole purpose of
18 this French measure is to get access to a document the content of which is already
19 known, at least to a certain extent. Thus, without assistance from this court the
20 requested discovery against Sheikh Hamad bin Jassim is unobtainable in the French
21 Discovery Proceeding.

22 14. With respect to the French Merits Proceeding, the rules governing the
23 collection of evidence and the burden of proof before French civil courts are set forth
24 in the Code of Civil Procedure. Those rules do not contain a mechanism by which
25 parties may get an investigation order targeting other parties or third parties, other
26 than a limited investigation order targeting a specific location.

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1 15. In conclusion, the requested discovery—albeit highly relevant to
 2 resolving the disputed facts in the French Merits Proceeding—is unobtainable in the
 3 French Proceedings.

4 **SECTION III –DOCUMENTS OBTAINED PURSUANT TO 28 U.S.C.**
 5 **§ 1782 BEFORE FRENCH COURTS**

6 16. In light of the statutes discussed above, as well as my review and
 7 assessment of Petitioners' document requests, I believe that the Paris Commercial
 8 Court will be receptive to considering the documents and testimony sought through
 9 the Application in the French Proceedings.

10 17. French courts, including the Paris Commercial Court, are generally
 11 receptive to discovery obtained via Section 1782, and I have no reason to believe
 12 that the Paris Commercial Court would decline to consider such discovery here that
 13 is obtained through lawful means. Indeed, the Paris civil court has explicitly ruled
 14 that “neither the Hague Convention of March 18, 1970 on the Taking of Evidence
 15 Abroad, nor the rules of the Code of Civil Procedure preclude a party from relying,
 16 in the course of the present proceedings in France, on evidence gathered in the course
 17 of discovery proceedings initiated in parallel in the United States, insofar as this
 18 evidence was gathered by a competent authority under the law applicable in that
 19 State and in accordance with the forms defined by that law, it being noted that it will
 20 be for the French judge to assess its probative value and its impact on the merits of
 21 the dispute submitted to the court” (*Tribunal de grande instance, Paris*, 3rd ch., 2nd
 22 sect., 29 September 2016, no. 15/00961). The receptivity of the French courts to the
 23 U.S. discovery has been explicitly affirmed by the U.S. courts (District Court of
 24 Massachusetts, 2 November 2020, *In re Valitus, Ltd.* (No. 20-mc-91133-FDS, 2020
 25 WL 6395591); District Court of South Florida, 15 January 2019, *In re Jagodzinski*
 26 (No. 18-20606-MC-WILLIAMS/TORRES, 2019 WL 1112389); District Court of

1 North California, 4 January 2017, In *re Mentor Graphics Corp.* (No. 16-mc-80037-
2 HRL, 2017 WL 55875)).

3 18. I am also unaware of any prohibition on the use of lawfully-obtained
4 discovery obtained via Section 1782 in French courts. Further, given that from the
5 French legal standpoint, Petitioners do not have enough evidence to obtain a pre-
6 litigation discovery order against Sheikh Hamad bin Jassim's Paris office, the
7 obtaining of additional evidence via this Application would only serve to *aid* the
8 court in the French Discovery Proceedings. As such, I do not believe that the
9 Petitioners' application is an attempt to circumvent French proof-gathering
10 restrictions or policy.

11 19. Additionally, Petitioners' application does not seek any privileged,
12 confidential, or otherwise restricted information that would prevent the Paris
13 Commercial Court from considering the evidence obtained through the Application.

14 20. Similarly, the discovery sought by the Petitioners is not unduly
15 burdensome or invasive, as it has been narrowly tailored to only seek information
16 from a single individual with first-hand knowledge of the key facts in dispute in and
17 highly relevant to the resolution of the French Merits Proceeding.

18 21. For the foregoing reasons, I believe that the Paris Commercial Court
19 will consider the evidence obtained from Petitioners' Application.

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21 DATED: May 6, 2024



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23 **PROFESSOR KAMALIA MEHTIYEVA**

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